

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAUL JOSE PEREZ,

Defendant.

Case No.: 08cr3827-01-JAH

**ORDER GRANTING DEFENDANT'S
MOTION FOR COMPASSIONATE
RELEASE [Doc. No. 76]**

INTRODUCTION

Pending before the Court is Defendant Raul Jose Perez's (hereinafter, "Defendant") motion to reduce his sentence of imprisonment in light of the increasing risks to health that the coronavirus disease ("COVID-19") poses to incarcerated persons and Defendant's underlying health conditions. *See generally* Doc. Nos. 76, 80. Defendant seeks compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). *Id.* Having carefully considered the pleadings, and for the reasons set forth below, Defendant's motion is **GRANTED**.

BACKGROUND

On October 10, 2008, Defendant was charged with three counts of Possession with Intent to Distribute a Controlled Substance, in violation of 21 U.S.C. § 841(a)(1). On November 6, 2008, the Court arraigned Defendant on a one count information that charged

1 him with Possession of Methamphetamine with Intent to Distribute, in violation of 21
2 U.S.C. § 841(a)(1). On December 9, 2008, the Court arraigned Defendant on and took his
3 guilty plea to a superseding information, which added a count of Possession of a Firearm
4 During and in Relation to a Drug Trafficking Crime, in violation of 18 U.S.C. § 924(c).

5 At the time of sentencing, Defendant had five criminal history points and was in
6 Criminal History Category III. Due to his prior conviction and active warrant for probation
7 violation, Defendant was not safety-valve eligible. Defendant's guideline range was 120-
8 135 months. On April 5, 2010, the Court sentenced Defendant to 120 months, the
9 mandatory minimum. As required by law, the Court sentenced Defendant to 60 months on
10 the § 924(c) charge, consecutive to the 120 months imposed on the § 841(a)(1) charge, for
11 a total sentence of 180 months.

12 On February 25, 2021, Defendant filed his *pro se* Motion for Sentence Reduction
13 under 18 U.S.C. § 3582(c)(1)(A) (Compassionate Release). *See* Doc. No. 76. Defendant
14 subsequently filed a supplement to his *pro se* motion for compassionate release through his
15 attorney on March 24, 2021. *See* Doc. No. 80. Defendant points to the combination of his
16 age, deteriorating medical condition, and time already served as an extraordinary and
17 compelling circumstance for why this Court should grant his motion for compassionate
18 release. *Id.* On March 31, 2021, the United States of America (hereinafter, "Government")
19 filed a Notice of Non-Opposition to Defendant's motion for compassionate release. *See*
20 Doc. No. 81.

21 **LEGAL STANDARD**

22 Under § 3582, as amended by the First Step Act, Pub. L. No. 115-391, 132 Stat.
23 5194 (Dec. 21, 2018), a court may modify a defendant's sentence "upon motion of the
24 defendant after the defendant has fully exhausted all administrative rights to appeal a
25 failure of the [BOP] to bring a motion on the defendant's behalf or the lapse of 30 days
26 from the receipt of such a request by the warden of the defendant's facility, whichever is
27 earlier." 18 U.S.C. § 3582(c)(1)(A). Upon such a motion, a court may modify a
28 defendant's sentence "after considering the factors set forth in § 3553(a) to the extent

1 applicable" if it finds "extraordinary and compelling reasons warrant such a reduction" and
 2 "such a reduction is consistent with applicable policy statements issued by the Sentencing
 3 Commission." *Id.* § 3582(c)(1)(A)(i). The relevant Sentencing Commission policy
 4 statement sets forth several "extraordinary and compelling reasons." U.S.S.G. §
 5 1B1.13(A) & cmt. 1. The Commission also requires the defendant not pose a danger to
 6 the safety of the community as provided in 18 U.S.C. § 3142(g). *Id.* § 1B1.13(2).

7 DISCUSSION

8 Defendant seeks review of his sentence under § 3582(c). He has exhausted his
 9 administrative remedies.

10 a. Extraordinary and Compelling Reasons

11 To be eligible for compassionate release, Defendant must demonstrate that
 12 "extraordinary and compelling reasons" warrant such a reduction and that the reduction is
 13 "consistent [with] applicable policy statements" issued by the U.S. Sentencing
 14 Commission. 18 U.S.C. § 3582(c)(1)(A). Although the statute does not define
 15 "extraordinary and compelling circumstances," the U.S. Sentencing Commission has
 16 identified four categories of situations that may qualify: serious medical conditions,
 17 advanced age, family circumstances, and a catch-all "other reasons." U.S.S.G. 1B1.13,
 18 application note 1(A). In application note 1 to the policy statement, the Commission
 19 identifies the "extraordinary and compelling reasons" that may justify compassionate
 20 release for a medical condition provides as follows:

21 (i) The defendant is suffering from a terminal illness (i.e., a serious and advanced
 22 illness with an end of life trajectory). A specific prognosis of life expectancy (i.e.,
 23 a probability of death within a specific time period) is not required[.]
 24 (ii) The defendant is—

25 (I) suffering from a serious physical or medical condition,
 26 (II) suffering from a serious functional or cognitive impairment, or
 27 (III) experiencing deteriorating physical or mental health because of the
 aging process, that substantially diminishes the ability of the defendant to
 provide self-care within the environment of a correctional facility and from
 which he or she is not expected to recover.

1 United States Sentencing Guidelines, Application Notes, § 1B1.13(1)(A). Finally, the note
 2 recognizes the possibility that BOP could identify other grounds that amount to
 3 “extraordinary and compelling reasons.” U.S.S.G. § 1B1.13, cmt. n.1(D).

4 Relevant to the Court’s analysis, as reported in his motion and BOP medical records,
 5 Defendant is currently 68 years old and suffers from numerous medical conditions.¹
 6 However, Defendant cites end stage renal disease as his most serious illness, for which he
 7 receives dialysis three times per week. *See* Doc. No. 80. Indeed, the BOP characterizes
 8 Defendant’s illness as a “deteriorating medical condition,” and based on Defendant’s
 9 medical history, suggests he may have a “steeper than average end-of-life trajectory.” *See*
 10 Doc. No. 80, Exhibit B, p. 2. In its non-opposition, the Government also posits
 11 extraordinary and compelling reasons exist independent of the threat of COVID-19 illness
 12 because end stage renal disease is a terminal illness that meets the definition under §
 13 1B1.13, cmt. n.1(A)(i). *See* Doc. No. 81. Accordingly, the Court finds Defendant’s age
 14 and underlying medical conditions qualify as extraordinary and compelling reasons to
 15 reduce his sentence that are consistent with the Guidelines’ policy statement.

16 **b. Factors Under 18 U.S.C. § 3142(g)**

17 Even where extraordinary and compelling reasons exist, the district court must
 18 consider whether the defendant is “a danger to the safety of any other person or to the
 19 community, as provided in 18 U.S.C. § 3142(g)[.]” U.S.S.G. § 1B1.13(1)(A), (2), cmt. n.
 20 1. To make this assessment, the Court is directed to the factors set out in § 3142(g),
 21 including, among other things: (1) the nature and circumstances of the offense charged; (2)
 22 the history and characteristics of the person, including character, physical and mental

24
 25 ¹ Defendant lists the following active medical conditions: “vitamin D deficiency; hyperlipidemia (high
 26 cholesterol); polyneuropathy in diabetes (nerve damage from diabetes); high blood pressure; asthma;
 27 end stage renal disease; secondary hyperparathyroidism (of renal origin); tinea pedis (athlete’s foot);
 28 tinea unguium (fungal infection of the toenails and fingernails); anemia; type 2 diabetes; hyperkalemia
 (low potassium); transient cerebral ischemic attack; retinopathy; gastroesophageal reflux disease;
 constipation, hemorrhoids, osteoarthritis of hip; low back pain; trigger finger; localized swelling, mass
 and lump, or the lower limb, and abnormalities of gait and mobility.” *See* Doc. No. 80; *see also* Exhibit
 A, pp. 1-6.

1 condition, family ties, employment, financial resources, past conduct, criminal history, and
 2 drug and alcohol abuse; and (3) the nature and seriousness of the danger to any person or
 3 the community that release would impose.

4 Here, the offenses of possession of methamphetamine with intent to distribute and
 5 possession of a firearm in relation to a drug trafficking crime are undoubtedly serious.
 6 Defendant also has a criminal history spanning much of his adult life. However, Defendant
 7 and the Government both assert that Defendant is not a danger to the community at this
 8 time because of his physical condition and BOP classification as a low security risk. *See*
 9 Doc. No. 80, Exhibit C, p. 4; *see also* Doc. No. 81. Further, Defendant's release plan to
 10 reside with his wife and son was approved by the BOP and ICE has rescinded the
 11 immigration detainer to allow for Defendant to remain in the country following his release.
 12 *See* Doc. No. 80, Exhibit B, p. 3-4; Exhibit C, p. 2. Accordingly, the Court determines
 13 Defendant's release from custody is appropriate.

14 **c. § 3553(a)**

15 Section 3553(a) provides that the sentencing court must impose a sentence that is
 16 "sufficient, but not greater than necessary, ... (A) to reflect the seriousness of the offense,
 17 to promote respect for the law, and to provide just punishment for the offense; (B) to afford
 18 adequate deterrence to criminal conduct; (C) to protect the public from further crimes of
 19 the defendant; and (D) to provide the defendant with needed educational or vocational
 20 training, medical care, or other correctional treatment in the most effective manner[.]" 18
 21 U.S.C. § 3553(a)(2)(A)-(D). The sentencing court is also directed to consider, among other
 22 factors, "the nature and circumstances of the offense and the history and characteristics of
 23 the defendant" and the "need to avoid unwarranted sentence disparities among defendants
 24 with similar records who have been found guilty of similar conduct[.]" Id. § 3553(a)(1),
 25 (6).

26 Defendant contends he has shown good behavior and reformed himself over the last
 27 12.5 years in custody, and thus the remaining § 3553(a) factors favor a sentencing reduction
 28 and early release. *See* Doc. No. 80, p. 15. The Government concurs, but asks that the

1 Defendant be ordered to serve the remainder of his original term of imprisonment under
2 home confinement, and that Defendant serve his five year term of supervised release
3 originally imposed by the Court, with all conditions to remain the same. *See* Doc. No. 81,
4 p. 5.

5 The Court has considered the § 3553(a) sentencing factors and finds that these
6 factors are in Defendant's favor. Defendant has already served approximately 80% of his
7 overall sentence, which reflects the custodial sanction to date has adequately addressed the
8 seriousness of Defendant's offense and adequately deters similar criminal conduct. The
9 Court also recognizes the support Defendant has from his wife and son to assist in his
10 adjustment to a law-abiding life.

11
12 The Court orders the remainder of Defendant's sentence, until August 3, 2021, shall
13 be served by way of home confinement. Defendant shall complete a 14-day quarantine
14 period and obtain a medical clearance from the BOP that he is not infected with COVID-
15 19 prior to his release. Defendant's original term of supervised release is hereby
16 MODIFIED to five (5) years of unsupervised release. This, in conjunction with five years
17 of unsupervised release, will serve as a deterrent to future criminal conduct and provide
18 fair and reasonable punishment.

19 **CONCLUSION**

20 For the reasons stated above, IT IS HEREBY ORDERED the Motion for
21 Compassionate Release is **GRANTED**.

22 **IT IS SO ORDERED.**

23
24 DATED: April 27, 2021

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28 Hon. John A. Houston
United States District Judge